

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Capacity Assignment)	DTE 04-01
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**AMENDED MOTION OF KEYSpan ENERGY DELIVERY NEW ENGLAND
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION
CONTAINED IN RESPONSE TO INFORMATION REQUEST 1-7 Supplemental**

KeySpan Energy Delivery New England (“KeySpan” or the “Company”)¹ at the request of the Hearing Officer hereby resubmits its Motion for Protective Treatment of Confidential Information dated June 11, 2004 that requested on behalf of one of its marketers that the Department of Telecommunications and Energy (the “Department”) grant protection from public disclosure, in accordance with G. L. c. 25, § 5D, its response to the Department’s information request DTE 1-7 Supplemental.

I. BACKGROUND

On May 19, 2004, the Department served information requests to commenters in this proceeding. As part of its First Set of Information Requests, the Department asked local distribution companies (“LDCs”) to submit information on marketers serving the Company’s service territory, including information on marketer volumes and the volumes as a percent of total sendout. In its response, KeySpan coded the names of marketers to protect information on market share from becoming public. The Department later directed the Company to identify the marketers. KeySpan was contacted by one of the

¹ The three Massachusetts local distribution companies that do business as KeySpan Energy Delivery New England are Boston Gas Company, Colonial Gas Company and Essex Gas Company.

marketers requesting that the Company seek confidential treatment of the information. In compliance with the Department's request, KeySpan resubmitted its response as DTE 1-7 Supplemental and requested confidential treatment.

The Company renews its request that the Department protect from public disclosure KeySpan's response to information request DTE 1-7 Supplemental that provides the names of the marketers and the marketer volumes and those volumes as a percent of total sendout. As discussed below, the information as set out in DTE 1-7 Supplemental is considered by the marketers to be competitively sensitive and release to the public would jeopardize the integrity of future negotiations between marketers and customers.

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G. L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In past decisions, the Department has found that pricing terms in gas supply contracts are subject to protection from disclosure under the statute. Colonial Gas Company, D.P.U. 96-18, at 4 (1996). In that case, the Department granted Colonial's request to protect pricing information that included reservation fees, demand charges,

commodity charges and other charges. Id. See also, Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, (1996) ("The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive.")² Similarly, the information set out in DTE 1-7 Supplemental as to the names of the marketers, and the associated volumes is competitively sensitive as to the marketers because it reveals their market share and could affect negotiations on price and compromise future bargaining positions.

III. BASIS FOR CONFIDENTIAL TREATMENT

The Department has long recognized the gas industry's concerns regarding disclosure of contract pricing terms in a competitive marketplace and has made an effort to ensure that its review process does not undermine an LDC's efforts to negotiate low cost flexible supply contracts for the benefit of its customers. See Berkshire Gas Company, D.P.U. 93-187/188/188/190, at 20 (1994).³ Likewise, a marketer's volumes and the marketer's percentage of total sendout, if public, would disclose market share and also is likely to affect future price negotiations.

Therefore, KeySpan seeks protection from public disclosure the information as disclosed in its response to DTE 1-7 Supplemental that identifies the names of marketers and their associated volumes and percentage of sendout. The marketers are active participants in the gas marketplace. Knowledge of market share can be determined from

² The Department routinely grants protective status of the price terms to non-tariff firm transportation contracts between an LDC and its customers filed with the Department pursuant to the provisions of G.L. c. 164 § 94. See e.g., Boston Gas Company, GC-00-27 (2000); Boston Gas Company, GC-00-14 (2000); Colonial Gas Company, GC-00-03 (2000).

³ In the Berkshire case, the Department went on to state: "...The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons."

information on volumes and percentage of total sendout and that information could affect negotiations on price and compromise future bargaining positions. KeySpan has not placed the documents for which it seeks protection into the public record.

IV. TERM

KeySpan proposes that the information for which it seeks confidential treatment be protected from public disclosure for a period of two years from the date of a final order in this proceeding and that KeySpan be afforded an opportunity to renew its request for continued confidential treatment at that time, if it so desires.

WHEREFORE, KeySpan respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

**KEYSPAN ENERGY DELIVERY
NEW ENGLAND**

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